



June 14, 2006  
House Education Committee  
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**Statement by the ACLU of Michigan re H.B. 4264**

Ensuring equal educational opportunity should be a core principle for every community, and schools must be given the tools necessary to allow all students to succeed, regardless of their gender, race, or background. The ACLU is committed to promoting such equal opportunity. For this reason, the ACLU has worked hard to ensure that young men of color are not pushed out of the schoolhouse into the jailhouse and that girls don't have to suffer sexual harassment as a price of education. But sex segregation is not the way to achieve these shared goals.

While some students certainly succeed in some sex-segregated settings, the best evidence we have tells us that *it is not the single-sex nature of these educational programs that leads to students' success*. Instead, other features of these programs such as smaller class size, better teachers, more funding, parental involvement, and attention to core subjects are key.<sup>1</sup> The problem facing too many public schools isn't that boys and girls are sharing a classroom; it is that they lack the resources that we know are critical to students' achievement.

Single-sex education is a quick fix that doesn't address the real challenges facing our schools and instead threatens to introduce a whole new set of problems. For instance, when California instituted several single-sex public schools for at-risk students in the 1990s, researchers found that

- Boys' schools overwhelmingly emphasized discipline and punishment. This reinforced boys' notions that being masculine meant getting in trouble and being aggressive or "bad."<sup>2</sup>
- Single-sex programs in some instances served as dumping grounds for boys labeled "at risk" and difficult to handle.<sup>3</sup>

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<sup>1</sup> See generally AMERICAN ASSOCIATION OF UNIVERSITY WOMEN EDUCATIONAL FOUNDATION (AAUW), SEPARATED BY SEX: A CRITICAL LOOK AT SINGLE-SEX EDUCATION FOR GIRLS 4-5 (1998).

<sup>2</sup> Elisabeth L. Woody, *Constructions of Masculinity in California's Single-Gender Academies*, in GENDER IN POLICY AND PRACTICE: PERSPECTIVES ON SINGLE-SEX AND COEDUCATIONAL SCHOOLING 280, 286-91 (Amanda Datnow & Lea Hubbard, eds. 2002); AMANDA DATNOW, ET AL., IS SINGLE GENDER SCHOOLING VIABLE IN THE PUBLIC SECTOR?: LESSONS FROM CALIFORNIA'S PILOT PROGRAM 41-44, 51-52 (2001).

<sup>3</sup> DATNOW ET AL., at 67.

- Discipline problems in the boys' schools led to high rates of teacher turnover, further undermining students' education.<sup>4</sup>
- Sex segregation did not guarantee students protection from the distractions caused by harassment, as students were often targeted as gay and subjected to harassment in single-sex environments.<sup>5</sup> Indeed, one study found that boys in single-sex classes experienced more harassment than any other group of students.<sup>6</sup>
- Teachers tended to rely on their own stereotypes about what is appropriate for boys versus what is appropriate for girls.<sup>7</sup> For example, in a class about American settlers, boys were taught survival skills, while girls were taught quilting and sewing.<sup>8</sup>
- Sex segregation contributed to gender stereotyping by students, which does not prepare students well for success in a coeducational world.<sup>9</sup>
- Single-sex academies in some cases siphoned off high-achieving students from coeducational classrooms, with a negative impact on the students "left behind" that threatened to drive more students out of these schools.<sup>10</sup>

Moreover, a recent comprehensive survey of data on the effectiveness of single-sex education by the U.S. Department of Education—an agency that has sought to promote sex segregation in the recent past, so hardly a disinterested party—conceded that "the results are equivocal."<sup>11</sup> Most studies showed no difference in academic outcomes in single-sex environments; some showed benefits for students in single-sex settings, while others showed benefits for students in coeducational settings. Again, sex segregation itself does not guarantee any particular educational result.

Proponents of single-sex education often argue that, on average, girls and boys have different learning styles. But the Supreme Court has held, "State actors controlling gates to opportunity . . . may not exclude qualified individuals based on 'fixed notions concerning the roles and abilities of males and females.'"<sup>12</sup> Generalizations about male and female learning styles are just such fixed notions that obscure and ignore the *individual's* capacities.<sup>13</sup> In other words, even if, for instance, boys are more competitive than girls on average, this says very little

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<sup>4</sup> *Id.* at 67.

<sup>5</sup> Woody, *supra*, at 296.

<sup>6</sup> Patricia B. Campbell & Jo Sanders, *Challenging the System: Assumptions and Data behind the Push for Single-Sex Schooling*, in GENDER PERSPECTIVES, *supra*, at 39-40.

<sup>7</sup> DATNOW ET AL., at 41-42; Katherine Herr & Emily Arms, *The Intersection of Educational Reforms: Single Gender Academies in a Public Middle School* in GENDER IN POLICY AND PRACTICE, *supra*, 74, at 83-86.

<sup>8</sup> *Id.* at 40.

<sup>9</sup> *Id.*; AMANDA DATNOW ET AL., IS SINGLE GENDER SCHOOLING VIABLE IN THE PUBLIC SECTOR?: LESSONS FROM CALIFORNIA'S PILOT PROGRAM 50 (2001).

<sup>10</sup> DATNOW ET AL., at 66-67.

<sup>11</sup> U.S. DEPARTMENT OF EDUCATION, SINGLE-SEX VERSUS COEDUCATION SCHOOLING: A SYSTEMATIC REVIEW, Executive Summary at x (2005).

<sup>12</sup> *Virginia*, 518 U.S. at 541 (quoting *Mississippi Univ. for Women v. Hogan*, 458 U.S. 718, 725 (1982)).

<sup>13</sup> *Id.*

about whether a *particular* boy or a *particular* girl will thrive in a competitive classroom environment.

To provide equal educational opportunities to all students, schools of course *should* ensure that options exist for students with different learning styles and that classroom experiences are structured to give both boys and girls ample opportunities to succeed. But no student should be excluded from an educational opportunity based on conclusions about what is appropriate for the *average* male or female student.<sup>14</sup>

I want to conclude by pointing out the legal problems with the current bill. *If adopted in its current form, this bill invites school districts to violate federal law and thus expose themselves to liability.* Michigan's children are not well served by such a measure and the diversion of resources it invites.

1. The bill permits school districts to segregate students by sex without an exceedingly persuasive justification for doing so, in violation of the Constitution. The Supreme Court has made clear that to be constitutional, a single-sex school or class must be based on exceedingly persuasive evidence that the single-sex nature of the program directly and substantially forwards educational goals. This bill does not require public schools to put forward *any* justification for segregating students by sex, much less an exceedingly persuasive one.

2. The bill permits school districts to assign students to single-sex programs, in violation of federal law. The federal Equal Educational Opportunities Act of 1974 expressly prohibits assigning students to a school on the basis of their gender.<sup>15</sup> Title IX's current regulations expressly prohibit sex-segregated classes,<sup>16</sup> *and even the recent proposed amendments to these regulations would prohibit assigning students to a single-sex class or program.*<sup>17</sup>

3. If the Senate language is adopted, the bill permits school districts to institute single-sex programs as long as a "comparable" program is provided to the other sex, in violation of the Constitution. The Supreme Court has explicitly held that the Constitution requires substantially *equal* public educational opportunities for male and female students, not "comparable" opportunities.<sup>18</sup> If single-sex public education is ever constitutional, at minimum the excluded sex must have access to substantially equal educational methods, instructional materials,

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<sup>14</sup> *Virginia*, 518 U.S. at 541-45.

<sup>15</sup> 20 U.S.C. §§ 1703(c), 1705; *see also* 69 Fed. Reg. at 11281 ("[R]ecipients are cautioned that assigning students to single-sex schools--rather than allowing students to voluntarily select between those schools and substantially equal coeducational schools--could violate the Constitution and the requirements of the Equal Educational Opportunities Act of 1974 (EEOA), which prohibits the assignment of students to schools on the basis of sex."); *United States v. Hinds County Sch. Bd.*, 560 F.2d 619 (5th Cir. 1977) ("Thus among the schools within a system, Congress intended to prohibit the assignment of students on the basis of race, color, sex, or national origin.").

<sup>16</sup> 34 C.F.R. § 106.34.

<sup>17</sup> 69 Fed. Reg. 11279 (2004) ("The proposed amendment to the regulations in 34 C.F.R. § 106.34(b)(1)(ii) would require that student participation in single-sex classes be on a voluntary basis.").

<sup>18</sup> *Virginia*, 518 U.S. at 554-556.

curricula, student body, faculty, course offerings, facilities, prestige, alumni opportunities, and financial support.<sup>19</sup>

Given the many questions about the legality and efficacy of single-sex programs, it makes sense to instead focus energies on helping schools undertake those educational strategies that *have* been proven effective in addressing the problems facing public schools today.

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<sup>19</sup> See *Virginia*, 518 U.S. at 547-554; see also *Newberg v. Board of Public Educ.*, 26 Pa. D. & C. 3d 682, 685-99 (Pa. Ct. of Com. Pleas 1983), *aff'd* 478 A.2d 1352 (Pa. Super. Ct. 1984) (undertaking detailed point by point comparison of single-sex schools in question to determine whether equal opportunities were offered as required by the Constitution).